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FILED

SUPERIOR COURT of CALIFORNIA  
COUNTY OF SANTA BARBARA

FEB 11 2004

GARY M. BLAIR, EXEC. OFFICER

By *Alicia Alcocer*  
ALICIA ALCOCER, Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF SANTA BARBARA

12 (COOK DIVISION)

13 THE PEOPLE OF THE STATE OF CALIFORNIA,

14 Plaintiff,

15 vs.

16 MICHAEL JACKSON,

17 Defendant.

Case No.: 1133603

18 DEFENDANT'S CONSOLIDATED  
19 RESPONSE TO (I) OPPOSITION  
20 OF THE ACCESS PROPONENTS  
21 TO PLAINTIFF'S MOTION FOR  
22 ORDER DIRECTING THAT  
23 CERTAIN WARRANTS FOR  
24 FURTHER SEARCH OF HARD  
25 DRIVES; SUPPORTING  
26 AFFIDAVIT AND RETURN BE  
27 FILED AND MAINTAINED  
28 UNDER SEAL UNTIL FURTHER  
ORDER OF COURT; (II)  
OPPOSITION OF THE ACCESS  
PROponents TO (1)  
PLAINTIFF'S MOTION FOR  
ORDER DIRECTING THAT  
CERTAIN SEARCH WARRANTS,  
SUPPORTING AFFIDAVITS AND  
RETURNS BE FILED AND  
MAINTAINED UNDER  
CONDITIONAL SEAL UNTIL  
FURTHER ORDER OF COURT,  
AND (2) PLAINTIFF'S REQUEST  
THAT REQUEST FOR ORDER  
DIRECTING THE SHERIFF TO  
LODGE CERTAIN ITEMS OF  
PROPERTY WITH THE COURT  
BE FILED UNDER SEAL;  
DECLARATION OF JULIAN W.

DEFENDANT'S CONSOLIDATED RESPONSE

1 POON IN SUPPORT THEREOF;  
2 and (III) NOTICE OF MOTION  
3 AND MOTION FOR ORDER  
4 DIRECTING THAT SEARCH  
5 WARRANT NO. SW 4912, ITS  
6 SUPPORTING AFFIDAVIT AND  
7 RETURN BE FILED AND  
8 MAINTAINED UNDER  
9 CONDITIONAL SEAL UNTIL  
10 FURTHER ORDER OF COURT;  
11 DECLARATION OF GERALD  
12 McC. FRANKLIN;  
13 MEMORANDUM OF POINTS  
14 AND AUTHORITIES

15 DATE: February 13, 2004  
16 TIME: 8:30 a.m.  
17 DEPT: SM 2 (Melville)

18 Defendant Michael Jackson ("Mr. Jackson") hereby responds to:

19 (I) Opposition of the Access Proponents to Plaintiff's Motion  
20 for Order Directing That Certain Warrants for Further Search  
21 of Hard Drives; Supporting Affidavit and Return be Filed and  
22 Maintained Under Seal Until Further Order of Court (filed  
23 February 9, 2004);

24 (II) Opposition of the Access Proponents to (1) Plaintiff's  
25 Motion for Order Directing That Certain Search Warrants,  
26 Supporting Affidavits and Returns be Filed and Maintained  
27 Under Conditional Seal Until Further Order of Court, and (2)  
28 Plaintiff's Request That Request for Order Directing the  
Sheriff to Lodge Certain Items of Property With the Court be  
Filed Under Seal; Declaration of Julian W. Poon in Support  
Thereof (filed February 6, 2004); and

(III) Notice of Motion and Motion for Order Directing That  
Search Warrant No. SW 4912, Its Supporting Affidavit and  
Return be Filed and Maintained Under Conditional Seal Until

DEFENDANT'S CONSOLIDATED RESPONSE

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Further Order of Court; Declaration of Gerald McC. Franklin;  
Memorandum of Points and Authorities (filed February 6,  
2004.)

Mr. Jackson requests that the Court follow the same procedure as was previously employed concerning the initial (November 2003) search warrants and related materials. Namely, Mr. Jackson requests that the Court direct the People to immediately provide the defense with the materials at issue so the defense may review the materials and formulate a position as to the sealing or unsealing thereof. The lack of an opportunity to review the materials would deny Mr. Jackson the effective assistance of counsel guaranteed by the United States and California Constitutions.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2  
3 INTRODUCTION

4 The three filings to which Mr. Jackson hereby responds cover three areas of  
5 materials: (1) warrants (and related documents) for the further search of hard drives<sup>1</sup>; (2)  
6 warrants (and related documents) for the search of the toll and billing records of certain  
7 telephone service providers<sup>2</sup>; and (3) a warrant (and related documents) for the search of a  
8 residence in Los Angeles.<sup>3</sup> (See Declaration of Mark J. Geragos at paragraph 2.)

9 Therefore, the merits – or lack thereof – of the various filing addressed herein cannot be  
10 determined without first granting the defense an *in camera* hearing during which it has an  
11 opportunity to review the documents and determine whether, and if so, to what degree,  
12 their unsealing would affect Mr. Jackson’s ongoing investigation into the matters set forth  
13 in the felony complaint.

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19 <sup>1</sup>See “Opposition of the Access Proponents to Plaintiff’s Motion for Order Directing  
20 That Certain Warrants for Further Search of Hard Drives; Supporting Affidavit and Return  
21 be Filed and Maintained Under Seal Until Further Order of Court” at p. 2:1-7.

22 <sup>2</sup>See “Opposition of the Access Proponents to (1) Plaintiff’s Motion for Order  
23 Directing That Certain Search Warrants, Supporting Affidavits and Returns be Filed and  
24 Maintained Under Conditional Seal Until Further Order of Court, and (2) Plaintiff’s Request  
25 That Request for Order Directing the Sheriff to Lodge Certain Items of Property With the  
26 Court be Filed Under Seal; Declaration of Julian W. Poon in Support Thereof” at p. 2:21-24.

27 <sup>3</sup>See “Notice of Motion and Motion for Order Directing That Search Warrant No. SW  
28 4912, Its Supporting Affidavit and Return be Filed and Maintained Under Conditional Seal  
Until Further Order of Court; Declaration of Gerald McC. Franklin; Memorandum of Points  
and Authorities” at p. 2:2-4.



I.

MR. JACKSON IS ENTITLED TO AN *IN CAMERA* REVIEW OF DOCUMENTS  
PRIOR TO A HEARING ON UNSEALING

The access proponents seek the release of various materials and again base their requests essentially on the California Rules of Court. As the papers themselves demonstrate, however, the Rules implicitly presume that the affected parties have had an opportunity to actually review the records sought to be unsealed. (See, e.g., Cal. Rules of Court, rule 243.1 (d).) Otherwise, the parties could not intelligently respond to the request.

Indeed, rule 243.2 (h) provides that “[n]otice of any motion, application, or petition to unseal must be filed and served on all parties in the case.” That notice requirement, along with the right to oppose the motion and obtain a hearing, would be meaningless if the defendant were not entitled to first review and evaluate the records at issue.

In other words, the detailed factual findings advocated here by the media defendants (see, e.g., Cal. Rules of Court, rule 243.2 (c) (d)) cannot, by definition, be knowingly litigated if the defendant’s counsel does not know what it is the media wants unsealed.

Here, as noted, neither Mr. Jackson nor his counsel has not had an opportunity to review the sealed documents, so it is impossible for him to put forth an informed argument as to why the documents should or should not remain sealed. The defense respectfully submits that the proper procedure by which to handle the media entities’ motion is for the Court to conditionally unseal the documents, order a copy be provided to the defense, order the documents placed back under seal and order that the hearing on the motion to unseal be continued to a future date with a further briefing schedule.

*Swanson v. Superior Court* (1989) 211 Cal.App.3d 332 provides analogous support for this position. There, a defendant sought access to an affidavit supporting a

1 search warrant, arguing that if the affidavit were sealed in its entirety he would not be  
2 able to intelligently challenge the warrant. The Court of Appeal held:

3 A defendant who cannot view any portion of the affidavit  
4 cannot make a judgment as to whether any of these challenges  
5 should be made. . . . This of course, leaves the defendant  
6 without an adversary before the court who can not only  
7 ascertain that the appropriate challenges are considered but  
8 also that the defense argument is vigorously and effectively  
9 pursued. [¶] We conclude that the only portion of an affidavit  
10 that may be concealed from the defendant is that portion  
11 which necessarily would reveal the identity of a confidential  
12 informant.

13 (*Id.*, at p. 339.)

14 The court noted that “[t]he problem with sealing the entire affidavit is one of due process.  
15 It prevents the defendant from being able to attack the warrant with the assistance of  
16 counsel.” (*Id.*, at p. 340.)

17 Albeit in a different context, the same basic reasoning applies here. The media  
18 now seeks access to sealed records which the defense has not yet been able to see. Just as  
19 was true for the defendant in *Swanson*, Mr. Jackson cannot be effectively represented on  
20 this motion unless and until his counsel is permitted to review the records in question to  
21 determine the degree of prejudice, if any, the unsealing will cause him.

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1 **CONCLUSION**

2 In light of the foregoing, Mr. Jackson respectfully requests that the Court permit a  
3 copy of the materials be provided to the defense only. Mr. Jackson further requests that a  
4 subsequent briefing schedule and hearing on the various motions be set. Mr. Jackson  
5 believes this procedure is mandated by the United States and California Constitutions and  
6 the California Rules of Court.

7  
8 Dated: February 11, 2004

Respectfully submitted,

9 GERAGOS & GERAGOS

10  
11 By:

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DEFENDANT'S CONSOLIDATED RESPONSE

PROOF OF SERVICE BY FAX

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 350 N. Grand Avenue, 39th Floor, Los Angeles, California 90071.

On execution date set forth below, I served the following

DOCUMENTS OR DOCUMENTS DESCRIBED AS:

DEPENDANT'S CONSOLIDATED RESPONSE TO (I) OPPOSITION OF THE ACCESS PROPONENTS TO PLAINTIFF'S MOTION FOR ORDER DIRECTING THAT CERTAIN WARRANTS FOR FURTHER SEARCH OF HARD DRIVES; SUPPORTING AFFIDAVIT AND RETURN BE FILED AND MAINTAINED UNDER SEAL UNTIL FURTHER ORDER OF COURT; (II) OPPOSITION OF THE ACCESS PROPONENTS TO (1) PLAINTIFF'S MOTION FOR ORDER DIRECTING THAT CERTAIN SEARCH WARRANTS, SUPPORTING AFFIDAVITS AND RETURNS BE FILED AND MAINTAINED UNDER CONDITIONAL SEAL UNTIL FURTHER ORDER OF COURT, AND (2) PLAINTIFF'S REQUEST THAT REQUEST FOR ORDER DIRECTING THE SHERIFF TO LODGE CERTAIN ITEMS OF PROPERTY WITH THE COURT BE FILED UNDER SEAL; DECLARATION OF JULIAN W. POON IN SUPPORT THEREOF; and (III) NOTICE OF MOTION AND MOTION FOR ORDER DIRECTING THAT SEARCH WARRANT NO. SW 4912, ITS SUPPORTING AFFIDAVIT AND RETURN BE FILED AND MAINTAINED UNDER CONDITIONAL SEAL UNTIL FURTHER ORDER OF COURT; DECLARATION OF GERALD McC. FRANKLIN; MEMORANDUM OF POINTS AND AUTHORITIES

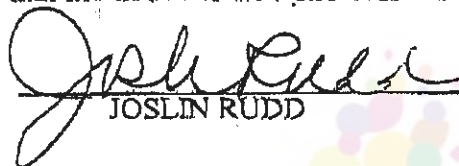
X transmitting by facsimile transmission the above document to the attorneys listed below at their receiving facsimile telephone numbers. The sending facsimile machine I used, with telephone number (213) 625-1600, complied with C.R.C. Rule 2003(3). The transmission was reported as complete and without error.

PARTIES SERVED BY FAX:

Judge Rodney S. Melville Fax No.: 805-346-7616	DA Thomas Sneddon Fax No.: 805-568-2398	DDA Gerald Franklin Fax No.: 805-568-2398
Benjamin Brafman Fax No.: 212-750-3906	Steve Cochran Fax. No.: 310-712-8455	Robert M. Sanger Fax. No.: 805-963-7311

Executed on February 11, 2004, at Los Angeles, California.

I declare under penalty of perjury that the above is true and correct.

  
\_\_\_\_\_  
JOSLIN RUDD